

APPEAL NO. 032925
FILED DECEMBER 30, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 30, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable low back injury on _____; that the claimant timely notified his employer of the injury; that the appellant (carrier) is precluded from raising the timely notice defense because it was not raised in the Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21); that the carrier is precluded from raising the issue of liability as a defense because "it did not clearly raise it in the TWCC-21"; that the claimant had disability from August 17, 2001, to the date of the CCH, less three days in December 2001 when he worked; and that the carrier timely contested the injury in accordance with Sections 409.021 and 409.022.

The carrier appealed the injury, timely notice to the employer, disability, and failure to specifically raise the issue of liability determinations as being against the great weight and preponderance of the evidence. The file does not contain a response from the claimant. The determinations that timely notice was not raised in the TWCC-21 and that the carrier timely contested the injury have not been appealed and have become final. Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant, a machine operator, testified that he sustained a low back injury on _____, shoveling some metal machine shavings; that he reported the injury to his supervisor that same day; and that he had disability from August 17, 2001, when his doctor took him off work, until the date of the CCH. Complicating the matter, and the basis of the carrier's defense, is that the claimant had sustained a compensable right hip and leg injury on July 12, 2001. In another CCH, with another hearing officer, it was determined that the July 12, 2001, compensable injury did not include the back. It was a week or two after that decision and order was issued that the claimant filed his claim for this _____, back injury. The carrier argues that since the claimant did not prevail on the July 12, 2001, extent of injury to the back, he is now claiming that injury as a new injury. The determinations on injury, notice to the employer, and disability all involve factual determinations for the hearing officer to resolve. The hearing officer, as the sole judge of the weight and credibility to be given to the evidence, was acting within her province in resolving the conflicts and contradictions in the evidence in favor of the claimant. We affirm the determinations of the compensable injury, timely notice to the employer, and disability.

The hearing officer determined that the carrier is precluded from raising the issue of liability as a defense because "it did not clearly raise it in the TWCC-21" (did not

specifically contest compensability). The relevant TWCC-21 gives the following reasons for disputing the claim:

Disputing claim on the basis of claim not filed within 1 year of alleged injury date. Notice received 8/20/02. Employer has no knowledge of an injury occurring on _____. If an injury should be found carrier contends that it was a minor exacerbation of a pre-existing condition and no disability resulted from the incident.

Although the hearing officer quotes the cited language in her Statement of the Evidence she gives no rationale for her determination that the TWCC-21 did not specifically contest compensability only finding that the carrier “did not clearly raise the issue of liability.” We disagree. While the line “Employer has no knowledge of an injury occurring on _____” taken out of context and considered in isolation may not say much, when considered with the sentence that follows can be fairly read to say: “the employer does not believe an injury occurred on _____ and if an injury is found to have occurred it was a minor exacerbation” We hold that the hearing officer’s interpretation of the TWCC-21 is against the great weight and preponderance of the evidence. We reverse the hearing officer’s determination that the carrier did not specifically contest compensability (which is how the issue was worded) on the issue of relief of liability, and render a new decision that the carrier’s contest of compensability adequately set out the grounds of a contest of compensability.

We affirm the hearing officer's decision and order on the issues of injury, timely notice to the employer, and disability. We reverse and render a new decision that the carrier's TWCC-21 is sufficiently specific in its contest of compensability.

The true corporate name of the insurance carrier is **FIRE & CASUALTY INSURANCE COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge